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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-742

R.D. TIMPANY,

Petitioner,

v.

STATE OF NEW JERSEY, COMMONWEALTH OF PENNSYLVANIA AND PENNSYLVANIA PUBLIC UTILITY COMMISSION,

Respondents.

BRIEF IN OPPOSITION

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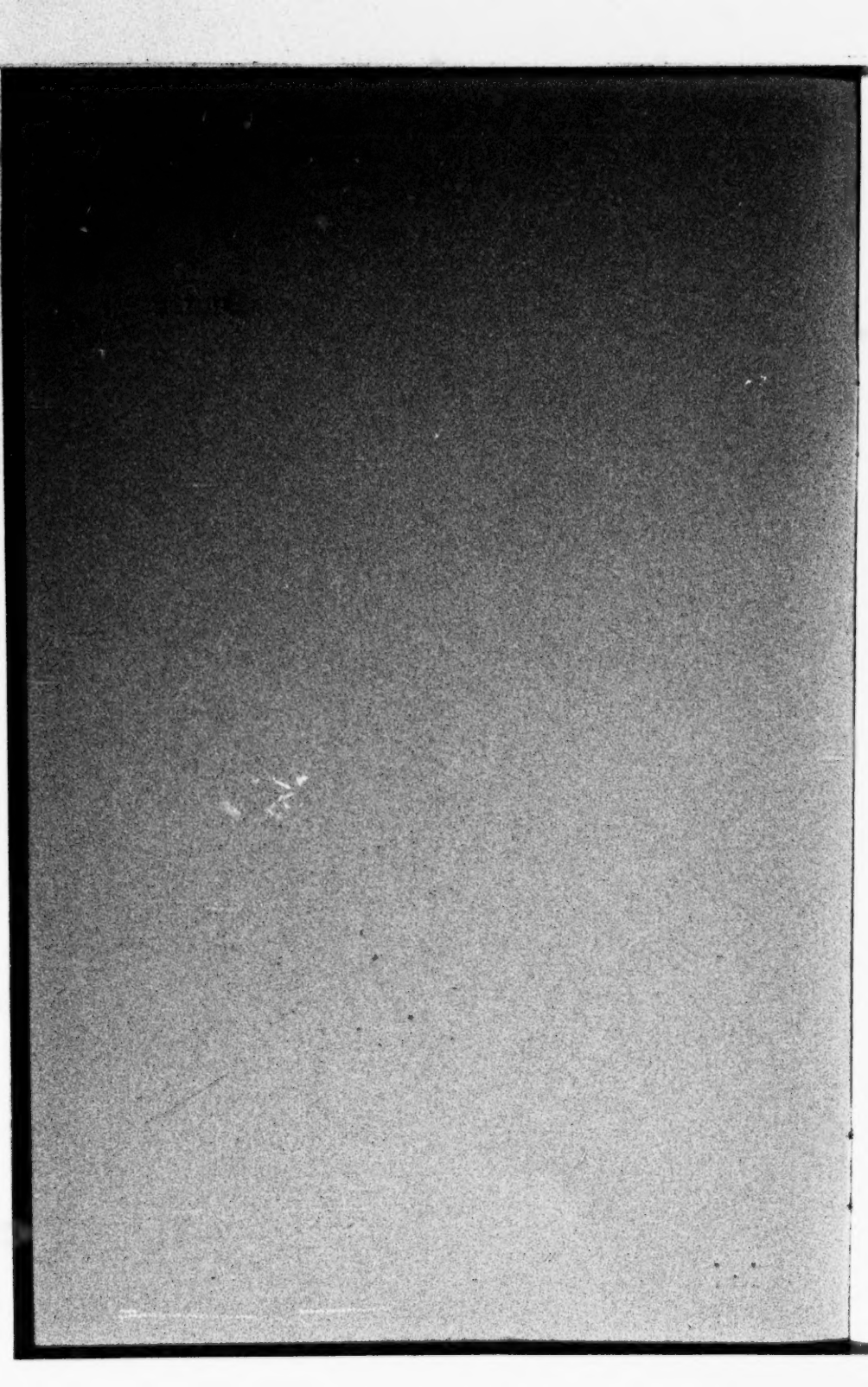

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BRIEF IN OPPOSITION

Commonwealth of Pennsylvania and Pennsylvania Public Utility Commission, respondents, submit this brief in opposition to the petition for *certiorari.*

The question presented below by Pennsylvania, and decided by the Third Circuit, is:

> Whether a railroad reorganization court may direct the discontinuance of all passenger train service without approval from the involved State regulatory agencies or the Interstate Commerce Commission.

Pennsylvania's interest in the complete discontinuance of passenger train service by The Central Railroad Company of New Jersey (CNJ), is the operation of two pairs of commuter trains on weekdays in both directions between Philadelphia, Pa. and Newark, N.J. These four trains operate in through equipment with Reading Company. The trains are operated as Reading trains between Philadelphia, Pa. and Bound Brook, N.J., and as CNJ trains between Bound Brook, and Newark, N.J. However, as far as the passenger is concerned, a single train operates between Philadelphia, Pa. and Newark, N.J.[1] At Newark, other railroads can be utilized for travel to and from New York, N.Y.

The CNJ reorganization court directed CNJ's trustee to summarily discontinue all passenger train service, without resort to either State or federal regulatory agencies. The U.S. Court of Appeals reversed, relying upon *Palmer v. Massachusetts,* 308 U.S. 79 (1939).

ARGUMENT

The decision below is correct, and no issue warranting plenary review is presented.

The reasoning of *Palmer v. Massachusetts, supra,* is sound today. A railroad reorganization court is "not qualified" to pass upon the discontinuance of train service:

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[1] The single through train operation between the two railroads is similar to that before the court in *United States v. Chicago,* 400 U.S. 8 (1970).

> "It has become the settled social policy both of the states and the nation to entrust the type of public interest here in question to expert administrative agencies because of 'the notion', as Judge Learned Hand pointed out below, 'that a judge is not qualified for such duties'." 308 U.S. at 86.

Moreover, Congress in 1958 accelerated passenger train discontinuance proceedings, by enactment of Section 13a to the Interstate Commerce Act. If a train operates wholly within one state, the jurisdiction of the I.C.C. may be invoked after 120 days. *New Jersey v. New York, S. & W. R. Co.*, 372 U.S. 1 (1963); *Southern R. Co. v. North Carolina*, 376 U.S. 93 (1964). A train operating from a point in one state to a point in another state might be discontinued on as little as 30 days' notice. *New Jersey v. United States*, 168 F. Supp. 324 (D.N.J. 1958), aff'd., 359 U.S. 27 (1959).

CNJ's assertion of constitutional arguments is baseless. The reorganization court made no findings of unconstitutionality (Pet., 3a-10a), and the Court of Appeals has not precluded future developments on this score. (Pet., 43a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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